

Docket No. 165,855

Claimant requests review of the Award entered in this proceeding on May 12, 1994, by Administrative Law Judge Shannon S. Krysl.

Claimant appeared by her attorney, James M. Glover of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, William L. Townsley, III, of Wichita, Kansas. There were no other appearances.

The record considered by the Appeals Board is enumerated in the Award of the Administrative Law Judge.

The stipulations of the parties are listed in the Award of the Administrative Law Judge and are adopted by the Appeals Board for this review.

ISSUES

Because the Administrative Law Judge found claimant's fibromyalgia syndrome was not related to a lifting incident at work on August 22, 1991, claimant's request for benefits was denied. The claimant requested review of that finding. That is the sole issue now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award of the Administrative Law Judge entered in this proceeding should be affirmed. The detailed findings of the Administrative Law Judge are correct and are adopted by the Appeals Board for this review to the extent they are not inconsistent with the findings set forth below.

The evidence fails to establish it is more probably true than not that claimant's fibromyalgia syndrome was caused or aggravated as a result of the alleged lifting incident at work on August 22, 1991. Fibromyalgia syndrome, a relatively new diagnosable disorder, is defined as a non-articular rheumatic condition characterized by diffuse aching, pain, and stiffness in muscles. In addition to being both difficult to diagnose and treat, it is difficult to determine its etiology.

Before the August 1991 lifting incident, claimant was experiencing various symptoms for which her physicians were unable to provide full explanation. In January 1991, claimant was inquiring of Dr. Johnson, her personal physician, whether it was possible she had lupus, a debilitating disease of unknown etiology which involves the joints and tissues over the entire body. On occasion, lupus is difficult to differentiate from rheumatoid arthritis or other connective tissue disorders. In February 1991, claimant saw Dr. Johnson for chest and back pain and occipital headaches. Later, in May 1991, claimant saw the Emergency Room staff at the Hutchinson Hospital for left leg pain due to no known trauma. In July 1991, claimant underwent a physical examination for employment which revealed symmetrically depressed deep tendon reflexes and no clonus of the ankle. As a result of this examination, the doctor diagnosed obesity and musculoskeletal chest pain. Various medical records introduced into evidence indicate claimant experienced dizziness and nausea before August 1991, and that she told Dr. Johnson the day after the alleged accident at work that her symptoms of back and leg pain had existed for some period of time.

The Appeals Board finds the testimony of Philip Mills, M.D., a physical medicine specialist in Wichita, Kansas, persuasive. Dr. Mills is board certified in the areas of physical medicine and rehabilitation, electroneurodiagnostic medicine, and pain management. He is a professor at K.U. Medical School, medical director of HCA Wesley Rehabilitation Hospital, and a private practitioner affiliated with Wichita Physical Medicine. A significant portion of his practice consists of treating patients with chronic pain syndromes. Because he was brought into this case when the Administrative Law Judge ordered an independent medical evaluation, Dr. Mills is presumably neutral in the

determination of the issues surrounding this case. The Appeals Board adopts Dr. Mills' opinion there is most likely or probably no correlation between claimant's fibromyalgia syndrome and the lifting incident of August 22, 1991. This conclusion is also supported by the opinion of Frederick Wolfe, M.D., another expert in the area of fibromyalgia syndrome, who testified he is unable to link claimant's alleged accident at work to the fibromyalgia syndrome.

Claimant bears the burden of proof to establish her claim. Burden of proof is defined in K.S.A. 1991 Supp. 44-508(g) as ". . . the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record." The burden of proof is:

" . . . on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record." K.S.A. 1991 Supp. 44-501(a).

Based on the record as a whole, the claimant has failed to carry her burden and benefits for the condition of fibromyalgia syndrome should be denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Shannon S. Krysl entered in this proceeding on May 12, 1994, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James M. Glover, Wichita, KS
William L. Townsley, III, Wichita, KS
Shannon S. Krysl, Administrative Law Judge
George Gomez, Director